



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

DAVID P. LITTELL
COMMISSIONER

MEMORANDUM

TO: The Board of Environmental Protection
FROM: Eric Ham, Bureau of Land & Water Quality, Augusta
RE: Consent Agreement for Prock Marine Company
DATE: September 3, 2009

Statute and Rule Reference: The *Natural Resources Protection Act*, 38 M.R.S.A. § 480-C, states that a person may not perform an activity in violation of the terms or conditions of a permit.

Location: Bristol, Maine

Description: On February 24, 2009, the Department granted a permit to Paul Anderson in Department Order #L-24434-4P-A-N to construct a float haul out. The Order required that equipment working in the intertidal area must work on erosion control mats. In the summer of 2009, staff inspected the property owned by Paul Anderson in response to a municipal complaint. Prock Marine Company was the contractor hired to complete the permitted work on Paul Anderson's property. A town official and Department staff inspection revealed that an excavator was operated in the coastal wetland without the use of erosion control mats.

Environmental Issues: The alteration of the coastal wetland can result in the destruction of intertidal marine habitat. Many marine organisms depend on the use of intertidal area for a portion of their life cycle. Department standards for the maintenance and expansion of existing structures within the coastal environment strike a delicate balance between shorefront property and the intertidal environment.

A staff inspection revealed that wave action at the site has brought the area near original grade and salt tolerant vegetation has begun to re-colonize the area.

Department Recommendation: The Department recommends acceptance of this Consent Agreement stipulating that Prock Marine Company pay a monetary penalty of \$1,900.00, which has been paid. The penalty is based on the Department's penalty policy reflecting the size of the violation, knowledge of the violator, and that the violation could have been avoided.

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STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

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DAVID P. LITTELL
COMMISSIONER

IN THE MATTER OF:

**PROCK MARINE COMPANY
BRISTOL, LINCOLN, MAINE
NRPA
2009-070-L**

) **ADMINISTRATIVE CONSENT**
) **AGREEMENT**
) **(38 M.R.S.A. § 347-A)**
)

This Agreement, by and among Prock Marine Company, the Maine Department of Environmental Protection ("Department"), and the Maine Office of the Attorney General, is entered into pursuant to the laws concerning the Department's *Organization and Powers*, 38 M.R.S.A. § 347-A(1).

THE PARTIES AGREE AS FOLLOWS:

1. Paul Anderson, 17 Barbican Rd., Pemaquid, ME 04558, owns a parcel of land on Barbican Rd. in Bristol, Maine as described and recorded in Book 757 on Page 115 of the Lincoln County Registry of Deeds.
2. Prock Marine Company, a Maine Corporation with a mailing address of 67 Front St., Rockland, ME 04841, is authorized to conduct business in Maine and was contracted by Paul Anderson to perform the work described in Paragraph 4 of this Agreement. ~~Randall~~ Prock is the President of Prock Marine Company. **Randy**
3. The property described in Paragraph 1 of this Agreement contains a portion of a coastal wetland as defined by the *Natural Resources Protection Act*, 38 M.R.S.A. § 480-B(2).
4. On February 24, 2009, the Department granted approval to Paul Anderson in Department Order #L-24434-4P-A-N to construct an 18' wide and 40' long float haul out and to alter the float and pile configuration of an existing pier on the property described in Paragraph 1 of this Agreement. The applicant proposed to use mats under heavy equipment to prevent disturbance of the intertidal area. The approval is subject to a series of standard and special conditions as follows:
 - A) Standard Condition A of the Standard Conditions of Approval for Department/Board Order #L-24434-4P-A-N states: "The granting of this permit is dependent upon limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals, and supporting documents is subject to review and approval prior to the implementation."
5. Department staff conducted an investigation of the property described in Paragraph 1 of this Agreement as follows:

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)

- A) On June 9, 2009, an inspection of the property by the Town of Bristol Code Enforcement Officer revealed that heavy equipment was being operated in the coastal wetland without the use of erosion control mats, which resulted in the displacement of sediments in the intertidal area. Prock Marine Company did not first obtain a modification to Department Order #L-24434-4P-A-N for this activity. At the time of inspection, there were no erosion controls installed on the site.
- B) On June 19, 2009, an inspection of the property by Department Staff revealed that heavy equipment had been operated in the coastal wetland without the use of erosion control mats. Prock Marine Company had not first obtained a modification to Department Order #L-24434-4P-A-N for this activity. At the time of inspection, the site was stable and the remnants of some ruts from the heavy equipment were observed.
6. The activities described in Paragraph 5 of this Agreement constitute the following violations:
- A) By failing to follow the plans submitted and approved in Department Order #L-24434-4P-A-N, Prock Marine Company violated Standard Condition A of Department Order #L-24434-4P-A-N and the *Natural Resources Protection Act*, 38 M.R.S.A. § 480-C.
- B) By displacing soil in a coastal wetland without first obtaining a permit from the Department, Prock Marine Company violated the *Natural Resources Protection Act*, 38 M.R.S.A. § 480-C.
7. On June 29, 2009, the Department issued a Notice of Violation to Prock Marine Company and Paul Anderson regarding the violations described in Paragraphs 5 and 6 of this Agreement in accordance with 38 M.R.S.A. § 347-A(1)(B).
8. The Department has regulatory authority over the activities described herein.
9. Pursuant to 38 M.R.S.A. § 341-D(6)(C) and 347-A(1)(A)(1), administrative consent agreements must be approved by the Board of Environmental Protection (the "Board") which is part of the Department.
10. This Agreement shall become effective only if it is approved by the Board and the Attorney General.
11. To resolve the violations referred to in Paragraphs 5 and 6 of this Agreement, Prock Marine Company agrees to pay the Treasurer, State of Maine, upon signing this Agreement, the sum of one thousand nine hundred dollars (\$1,900.00) as a civil monetary penalty.

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)

12. The Department and the Office of the Attorney General grant a release of their causes of action against Prock Marine Company for the specific violations listed in Paragraphs 5 and 6 of this Agreement on the express condition that all actions listed in Paragraph 11 of this Agreement are completed in accordance with the express terms and conditions of this Agreement. The release shall not become effective until this condition is satisfied.

IN WITNESS WHEREOF the parties hereto have executed this Agreement consisting of four (4) pages.

PROCK MARINE COMPANY

BY: Randy Prock DATE: 8-10-09
RANDY PROCK, PRESIDENT

MAINE BOARD OF ENVIRONMENTAL PROTECTION

BY: _____ DATE: _____
SUSAN M. LESSARD, CHAIR

MAINE OFFICE OF THE ATTORNEY GENERAL

BY: _____ DATE: _____
MARGARET A. BENSINGER, ASSISTANT ATTORNEY GENERAL